

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

JUL 7 2005

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY BS DEPUTY

JAMES MURL BULLOCK,

Petitioner,

vs.

ERIC FRANKLIN, Warden,

Respondent.

No. CIV-05-215-W

ORDER

On June 16, 2005, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation in this matter and recommended that the Motion to Dismiss Petition filed by respondent Eric Franklin be denied. The parties were advised of their right to object to the Report and Recommendation. Bullock responded and urged the Court to grant him the relief requested in his Petition for a Writ of Habeas Corpus. Franklin did not respond within the time permitted.

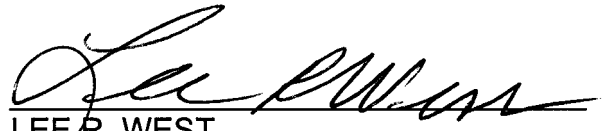
Upon de novo review of the record, the Court concurs with Magistrate Judge Bacharach's recommended disposition of Franklin's motion. Although exhaustion of state judicial remedies is generally required, e.g., 28 U.S.C. § 2254(b)(1), exhaustion is excused when as in the instant action further proceedings in state court would be futile. E.g., Bear v. Boone, 173 F.3d 782, 784 (10th Cir. 1999).

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation issued on June 16, 2005;
- (2) DENIES Franklin's Motion to Dismiss Petition filed on April 1, 2005; and

(3) RE-REFERS this matter to Magistrate Judge Bacharach for further proceedings on the merits.

ENTERED this 7th day of July, 2005.


LEE R. WEST
UNITED STATES DISTRICT JUDGE